

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

**FILED**

2010 JAN 21 P 3:14

SUSAN SHANKS,

Plaintiff,

v.

UNITED OF OMAHA LIFE INSURANCE  
COMPANY,

Defendant.

U.S. DISTRICT COURT  
EASTERN DIST. TENN.

BY \_\_\_\_\_ DEPT. CLERK

No. 10-CV-11

*Edgar/Carter*

**NOTICE OF REMOVAL**

Defendant United of Omaha Life Insurance Company ("United of Omaha") files this Notice to remove to this Court an action brought against it and currently pending in the Circuit Court of Hamilton County, Tennessee, bearing Docket No. 10C107, and with respect thereto, would show this Court as follows:

1. The above-styled cause was commenced in the Circuit Court of Hamilton County, Tennessee, Case No. 0C107, by virtue of a Complaint filed by Plaintiff Susan Shanks ("Shanks") on January 4, 2010, against Defendant. United of Omaha was served with process on January 11, 2010. Pursuant to 28 U.S.C. § 1446(a), a copy of the aforementioned Complaint, along with copies of process, are attached hereto and made a part of this Notice by reference.

2. Upon information and belief, Plaintiff is a citizen of the State of Tennessee, County of Hamilton.

3. This action is one of a civil nature for damages claimed as a result of alleged breach of an insurance contract by the Defendant. Manning was a participant in a disability

insurance policy purchased through United of Omaha (“Plan”). Plaintiff’s action is civil in nature, there is complete diversity jurisdiction, and this Court has jurisdiction over Plaintiff’s action under the provisions of 28 U.S.C. § 1332.

4. Defendant filed this Notice of Removal in this Court on January 21, 2010. Defendant’s Notice of Removal has been filed within the 30-day time period in 28 U.S.C. § 1446(b) because it is being filed within thirty days of when Plaintiff filed the Complaint.

5. This Court has jurisdiction over this cause under 28 U.S.C. § 1332(a)(1) and (c)(1) and 28 U.S.C. § 1441, *et seq.*

6. There is complete diversity of citizenship between Plaintiff and Defendant. Plaintiff is a resident of Tennessee. United of Omaha is a Nebraska insurance company, whose principal place of business is in Omaha, Nebraska, and it is not publicly traded.

7. Based on a fair reading of the Complaint, including the request for attorneys’ fees and treble damages under the Tennessee Consumer Protection Act, the damages sought by the Plaintiff arising from the allegedly improper denial of disability income benefits exceed the jurisdictional limit of \$75,000<sup>1</sup>.

8. The time period within which Defendants are required to file this Notice of Removal pursuant to 28 U.S.C. § 1446 has not yet expired. Since the date on which the

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<sup>1</sup> The Plaintiff’s failure to include an ad damnum in the Complaint does not preclude removal to this Court. In Hayes v. Equitable Energy Resources Co., 266 F.3d 560 (6th Cir. 2001), the Plaintiffs sought unspecified and liquidated damages against the Defendants arising out of a breach of oil and gas lease agreement in a Kentucky state court. Upon removal, the Plaintiffs contended that the Defendants had not met the burden in demonstrating the requisite amount in controversy for diversity action to be removed to federal court. The Hayes court states:

This Court places a burden on a defendant seeking to remove an action to federal court to show by a preponderance of the evidence that the amount in controversy requirement has been met. *Gafford*, 997 F.2d at 158. **This standard “does not place upon the defendant the daunting burden of proving, to a legal certainty, that the plaintiff’s damages are not less than the amount-in-controversy requirement.** Such a burden might well require the defendant to research, state and prove the plaintiff’s claim for damages.” *Id.* Hayes v. Equitable Energy Resources Co., 266 F.3d at 572. (emphasis added)


applicable Defendant was served with the summons and a copy of the Complaint, there have been no other proceedings in this case in the Circuit Court of Hamilton County, Tennessee.

9. United of Omaha files herewith a copy of all process, pleadings, and orders served upon all parties to this action and available from the Circuit Court of Hamilton County, Tennessee at the time of filing.

10. The allegations of this Notice are true and correct and within the jurisdiction of the United States District Court for the Eastern District of Tennessee, and this cause of action is removable to the United States District Court for the Eastern District of Tennessee.

WHEREFORE, Defendant files this Notice for the purpose of removing this action from the Circuit Court of Hamilton County, Tennessee, to the United States District Court for the Eastern District of Tennessee.

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.

By: 

Cameron S. Hill, TN BPR No. 017408  
Edward N. Boehm, Jr., TN BPR No. 025275  
1800 Republic Centre  
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Counsel for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this the 21 day of January, 2010, I caused a copy of the foregoing *Notice of Removal* to be served upon the following counsel of record for the plaintiff in the above-styled cause:

Eric L. Buchanan, Esq.  
R. Scott Wilson, Esq.  
D. Seth Holliday, Esq.  
Eric Buchanan & Associates, PLLC  
414 McCallie Avenue  
Chattanooga, TN 37402

by deposit in the United States mail, postage prepaid and properly addressed.

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.

By: TJ W